

Ct. App. 1993)). The Court further opined that for “sophisticated parties such as these it could reasonably be anticipated using current inflation rates” to determine damages. ECF 182 at p. 9. Accordingly, the Court permitted IRG to present its electrical damages adjusted for inflation. This decision was in accord with Indiana caselaw. *See Colonial Disc. Corp. v. Berkhardt*, 435 N.E.2d 65, 67 (Ind. Ct. App. 1982) (“An awareness of general inflation and a constant depreciation and cheapening of money is within the zone of discretion given the trier of facts when assessing damages”); *Richmond Gas Corp. v. Reeves*, 158 Ind. App. 338, 369, 302 N.E.2d 795, 815 (Ind. Ct. App. 1973) (same); *Kern v. Radez*, 665 F. Supp. 2d 982, 987 (S.D. Ind. 2009) (“[f]actors such as...rate of inflation, present value... are relevant and admissible evidence”) (quoting *Ashland Pipeline Co. v. Indiana Bell Telephone Co.*, 505 N.E.2d 483 (Ind. App. 1987)).

The same result is warranted for IRG’s environmental damages. Just as inflation causes pricing changes to electrical equipment, so too does inflation cause changes in the price of equipment necessary for environmental remediation. Similarly, environmental remediation also involves labor price inflation changes as well as the inflation attributable to an increase in materials prices. In both instances, IRG is entitled to an adjustment for inflation.

During the preliminaries session on the first day of trial, IRG explained that its environmental damages included an adjustment for inflation that had been calculated using government data and widely accepted and utilized inflation data from CBRE, a global real estate company that monitors labor and construction costs. This adjustment raised IRG’s environmental damages—originally calculated in 2020—from \$11.16 million to \$13.56 million. This resulted from application of two rates. First, IRG applied the 27.9% rate for labor and construction for non-residential properties for the relevant period in the CBRE Construction Cost Index. *See* CBRE Construction Cost Index (Annual Increases by Scenario), available at

<https://www.cbre.com/insights/books/us-real-estate-market-outlook-2023/construction-costs>. As IRG's environmental contamination and remediation expert Dr. Delaney will testify, this rate is relevant to numerous types of activities called for in IRG's itemized environmental damages. Second, IRG applied the default United States Government Consumer Price Index of 17.7% for the relevant period for lab work and other types of activities that are not covered by the CBRE Construction Cost Index. *See* CPI Inflation Calculator, United States Bureau of Labor Statistics, available at https://www.bls.gov/data/inflation_calculator.htm. The \$13.56 million damages number is thus grounded in well-known and widely used metrics. To the extent any issue is raised by Defendant Insurers as to this number, it is an appropriate subject for cross examination.

CONCLUSION

For the reasons stated above, IRG respectfully requests that the Court permit IRG's environmental damages to include an adjustment for inflation.

DATED this 17th day of May 2023

Respectfully submitted,

/s/ Mark E. Miller

Mark E. Miller

Brian G. Friel

Benjamin W. Massarsky

William T. O'Neil

MILLER FRIEL, PLLC

2445 M Street NW, Suite 910

Washington, DC 20037

Tel: (202) 760-3160

Fax: (202) 459-9537

millerm@millerfriel.com

frielb@millerfriel.com

massarskyb@millerfriel.com

oneilw@millerfriel.com

Clint A. Zalas

LEE, GROVE and ZALAS

54391 30th Street

South Bend, Indiana 46635

Tel: (574) 232-5923

Fax: (574) 232-5942

cazalas@lgzlegal.com

Attorneys for Plaintiff Indiana GRQ, LLC

CERTIFICATE OF SERVICE

I, Benjamin W. Massarsky, hereby certify that on May 17, 2023, a copy of the foregoing was served electronically on the parties listed below:

Peter E. Kanaris
David E. Heiss
Hinshaw & Culbertson LLP
151 N. Franklin Street, Suite 2500
Chicago, Illinois 60606
dheiss@hinshawlaw.com
pkanaris@hinshawlaw.com

Jennifer J. Kalas
Hinshaw & Culbertson, LLP
322 Indianapolis Blvd.
Suite 201
Schererville, IN 46375
Tel: (219) 864-4521
Fax: (219) 864-5052
jkalas@hinshawlaw.com

Mitch Orpett
David Schroeder
Tribler Orpett & Meyer P.C.
225 West Washington, Suite 2550
Chicago, IL 60606
maorpett@tribler.com
deschroeder@tribler.com

/s/ Benjamin W. Massarsky
Benjamin W. Massarsky